

**ORIGINAL**

BEFORE THE  
**FEDERAL COMMUNICATIONS COMMISSION**  
 WASHINGTON, D.C. 20554

In re

)  
 )  
 Amendment of § 73.202(b) of the Rules, )  
 Table of Allotments, FM Broadcast Stations )  
 (LLANO AND MARBLE FALLS, TEXAS) )

MM Docket No. 95-49  
 RM-8858

To: The Chief, Allocations Branch,  
 Mass Media Bureau

**OPPOSITION TO MOTION TO STRIKE**

Maxagrid Broadcasting Corporation, licensee of station KBAE(FM), Channel 285C3, Marble Falls, Texas, opposes Roy E. Henderson's Motion to Strike Maxagrid's Opposition to Mr. Henderson's and Tichenor License Corporation's Motion to stay the Report and Order, 62 Fed. Reg. 31008 (June 6, 1997). Mr. Henderson claims that Maxagrid's Opposition was one week late and must be dismissed without consideration of its contents. Leaping from that premise, Mr. Henderson claims the stay request is unopposed and must be granted.

Maxagrid regrets the need to burden the Commission with any unnecessary pleading cycle. And if there ever was one, this is surely it.<sup>1</sup> Assuming for the sake of argument that Maxagrid's Opposition was one week late, there is no justification to strike it.

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<sup>1</sup>Tichenor License Corporation appears to have the lion's share of the Joint Movant's judgment, because Mr. Henderson is flying solo with his strike motion.

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The staff has not yet ruled on the stay request. The Opposition is three sentences long, less an attachment and the certificate of service. Consideration of the Opposition will hardly delay the administration of justice.<sup>2</sup>

The attachment is an FCC appellate brief and Commission decision that, on all fours, capably and precisely spells out why a stay is unwarranted and harmful to the public interest. True, as Mr. Henderson points out, the FCC brief and decision (which the Circuit Court found persuasive) predates by a decade last year's abolition of former Section 1.420(f)'s automatic stay mechanism. However, the recent amendment of Section 1.420 left intact the test which stay champions like the Joint Movants must satisfy — the test laid out and implemented in the attachment to the Opposition.

What Mr. Henderson seeks to banish from the Commission's sight are the Commission's own words dooming the Joint Movants' stay request. Even if Maxagrid failed to do so, the controlling precedent opposes the stay request.

Maxagrid was and is under no obligation to oppose the stay request. Any failure to do so would not have comprised a concession as to the Joint Movants' bogus claims, which the FCC's own decisions belie. See Exhibit A to Stay Opposition; cf. 47 C.F.R. § 73.3584(b) ("The failure to file an opposition or reply will not necessarily be construed as an admission of fact or argument contained in a pleading.")

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<sup>2</sup>The Opposition's brevity is a direct function of the Motion for Stay's lack of merit.

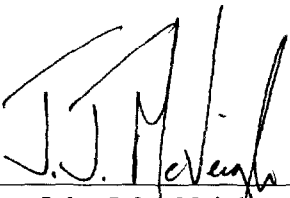
## **CERTIFICATE OF SERVICE**

I hereby certify that I have, this Twenty-first day of July, 1997, sent copies of the foregoing **OPPOSITION TO MOTION TO STRIKE** by first class United States Mail, postage prepaid, to:

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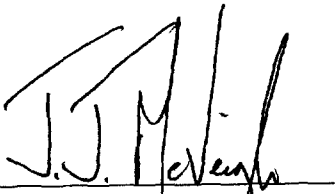
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